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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Western Alliance Bank,

10 Plaintiff,

11 v.

12 Goldenrod Capital Partners LP,

13 Defendant.
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No. CV-24-00121-PHX-DWL

ORDER

15 The Court has an independent obligation to determine whether it has subject-matter
16 jurisdiction. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999). Pursuant to
17 Rule 12(h)(3) of the Federal Rules of Civil Procedure, “[i]f the court determines at any
18 time that it lacks subject-matter jurisdiction, the court must dismiss the action.”

19 Defendant removed this action solely on the basis of diversity jurisdiction. (Doc.
20 1.) The party seeking to invoke diversity jurisdiction has the burden of
21 proof, *Lew v. Moss*, 797 F.2d 747, 749-50 (9th Cir. 1986), by a preponderance of the
22 evidence. *McNatt v. Allied-Signal, Inc.*, 972 F.2d 1340 (9th Cir. 1992); *see* 13B Federal
23 Practice § 3611 at 521 & n. 34. There is a strong presumption against removal
24 jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (“Federal jurisdiction
25 must be rejected if there is any doubt as to the right of removal in the first instance.”).
26 “Absent unusual circumstances, a party seeking to invoke diversity jurisdiction should be
27 able to allege affirmatively the actual citizenship of the relevant parties.” *Kanter v.*
28 *Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

1 On January 17, 2024, Defendant filed the notice of removal, alleging that subject-
2 matter jurisdiction exists due to the parties' diversity. (Doc. 1.)

3 On January 18, 2024, Defendant filed a notice of errata correcting an inadvertent
4 error in the details of its citizenship (Doc. 6) and an amended notice of removal (Doc. 7).

5 Defendant's amended notice of removal contains detailed allegations regarding the
6 parties' citizenship for diversity purposes (*id.* ¶¶ 7-18), and Court appreciates Defendant's
7 efforts in this regard. Nevertheless, several errors or omissions must be corrected.

8 The amended notice of removal correctly identifies the legal standard for alleging
9 the citizenship, for diversity purposes, of unincorporated business associations. (*Id.* ¶ 6.)
10 An unincorporated business association, such as a limited partnership or an LLC, "is a
11 citizen of every state of which its owners/members are citizens." *Johnson v. Columbia*
12 *Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). Thus, to properly establish
13 diversity jurisdiction "the citizenship of all of the members must be pled." *NewGen, LLC*
14 *v. Safe Cig, LLC*, 840 F.3d 606, 611 (9th Cir. 2016). Pleading the citizenship of all
15 members can be a complicated task. The members of each unincorporated business
16 association must be listed and the citizenship of each affirmatively alleged, using the proper
17 legal standard for each—*i.e.*, alleging the place of domicile¹ for members who are natural
18 individuals, the place of incorporation and principal place of business for members that are
19 corporations, and, if any of the unincorporated business association's members are other
20 unincorporated business associations, the citizenship of each of the member association's
21 members, again using the proper legal standards.

22 Defendant alleges that it is a limited partnership and that its General Partner is
23 Goldenrod GP I, LLC, the sole member of which is Goldenrod Ventures, LLC, and that
24 the sole member of Goldenrod Ventures, LLC is Goldenrod Companies, LLC. (Doc. 7
25 ¶¶ 8-9.) So far, so good.

26 Next, Defendant alleges that Goldenrod Companies, LLC "is owned 49% by the
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28 ¹ An individual's state of domicile is "her permanent home, where she resides with
the intention to remain or to which she intends to return." *Kanter*, 265 F.3d at 858-59.

1 Wiegert Family Trust and 51% by the Zachary A. Wiegert 2018 Revocable Trust.” (*Id.* ¶
 2 9.) Defendant alleges that “Zachary A. Wiegert is the primary beneficiary of both the
 3 Wiegert Family Trust and Zachary A. Wiegert 2018 Revocable Trust” and that “Zachary
 4 A. Wiegert is a resident of Texas,” and from this, Defendant concludes that “Goldenrod
 5 GP I, LLC is a citizen of Nebraska and Texas.”²

6 In the Ninth Circuit, the citizenship of a trust is not determined by the citizenship of
 7 its beneficiary (or beneficiaries). Rather, for a traditional trust, “the trustee is the real party
 8 in interest, and so its citizenship, not the citizenships of the trust’s beneficiaries, controls
 9 the diversity analysis.” *Demarest v. HSBC Bank USA, N.A. as Tr. for registered holders*
 10 *of Nomura Home Equity Loan, Inc., Asset-Backed Certificates, Series 2006-HE2*, 920 F.3d
 11 1223, 1231 (9th Cir.). Both the Wiegert Family Trust and Zachary A. Wiegert 2018
 12 Revocable Trust appear to be traditional trusts,³ and therefore the citizenship of the trusts’
 13 trustees will determine the citizenship of Goldenrod GP I, LLC. Because the amended
 14 removal notice provides no information about the trustees or their citizenship (and,
 15 alternatively, does not specify that the Wiegert Family Trust and Zachary A. Wiegert 2018
 16 Revocable Trust are something other than traditional trusts), it is therefore insufficient to
 17 establish the existence of diversity jurisdiction.

18 Separately, Defendant alleges that it has six limited partners and asserts that it “does
 19 not have the authority to disclose the identities of most of the limited partners.” (Doc. 7

20 ² Defendant seems to assume that “Goldenrod GP I, LLC is a citizen of Nebraska”
 21 because the LLC was “organized under the laws of the state of Nebraska.” (Doc. 7 ¶ 9.)
 22 This seems to partially conflate the standards for pleading the citizenship of corporations
 23 and unincorporated associations. A corporation, whether incorporated in a state of the
 24 United States or in a foreign country, is “deemed a citizen of its place of incorporation and
 the location of its principal place of business.” *Nike, Inc. v. Comercial Iberica de*
Exclusivas Deportivas, S.A., 20 F.3d 987, 990 (9th Cir. 1994). But the “place of
 incorporation” is not a relevant citizenship consideration in the case of an unincorporated
 association, as the analysis focuses solely on the citizenship of its members.

25 ³ A business trust may sue and be sued in its own name. *See, e.g., McLeod v. Deutsche*
 26 *Bank Nat’l Tr. Co.*, 2017 WL 2189498, *3 (Ariz. Ct. App. 2017) (unpublished). When an
 27 entity is a business trust rather than a traditional trust, the citizenship of the entity is the
 28 citizenship of each of its members. *Cf. Americold Realty Tr. v. Conagra Foods, Inc.*, 577
 U.S. 378, 383 (2016) (holding Maryland real estate investment trusts to be unincorporated
 entities that can sue or be sued in their organizational names).

¶ 10.) Defendant designated the limited partners as “LP I, LP II, LP III, LP IV, LP IV [sic], and LP VI” (*id.*) and offered to “file under seal documents establishing the identity and citizenship of the confidential limited partners, LP II through LP VI” if needed. (*Id.* at 3 n.1.) The notice of removal then alleges facts purporting to establish the citizenship of each limited partner. (*Id.* ¶¶ 11-16.)

Although the Court appreciates Defendant’s attempt to identify a creative solution to the confidentiality issue, its proposed approach is untenable. First, as multiple courts have concluded, it is impermissible for a party seeking to invoke a federal court’s limited jurisdiction to refuse to disclose, on confidentiality grounds, the true identities of the individuals and entities whose citizenship must be established as part of the diversity analysis. Such disclosure is part of the price of establishing an entitlement to a federal forum. *See, e.g., Belleville Catering Co. v. Champaign Market Place, L.L.C.*, 350 F.3d 691, 693 (7th Cir. 2003) (“Champaign Market Place says that one of its members is another limited liability company that ‘is asserting confidentiality for the members of the L.L.C.’ It is not possible to litigate under the diversity jurisdiction with details kept confidential from the judiciary. So federal jurisdiction has not been established. The complaint should not have been filed in federal court . . . and the magistrate judge should have checked all of this independently (for inquiring whether the court has jurisdiction is a federal judge’s first duty in every case.)”); *Master v. Quiznos Franchise Co.*, 2007 WL 419287, *2 (D.N.J. 2007) (“[A]sserting confidentiality for the members is unacceptable . . .”) (cleaned up); *Brown v. Diversified Maintenance Sys., LLC*, 2016 WL 3207712, *4 (W.D.N.Y. 2016) (“[T]he defendant’s attempt to avail itself of a federal forum while keeping confidential the members of Diversified Maintenance Systems Holdings, LLC, is not well taken.”).

Second, to the extent Defendant offers to disclose the true identities of the limited partners in an under-seal filing, this too is insufficient. Under Ninth Circuit law, the public has a general right to inspect judicial records and documents, such that a party seeking to seal a judicial record must overcome “a strong presumption in favor of access.” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). It is difficult to see how

1 Defendant's assertion that it "does not have authority" to disclose the true identities of the
 2 limited partners in a public filing could, alone, qualify as permissible reason for authorizing
 3 an under-seal filing. *See, e.g., Wallace v. AmeriPro EMS, LLC*, 2023 WL 7282888, *1
 4 (M.D. Fla. 2023) ("Defendant requests leave to file under seal the names and addresses of
 5 certain members of AmeriPro who are 'non-participating confidential members' with only
 6 a 'financial interest.' Upon review, the Court finds that the Motion is due to be denied. . . .
 7 AmeriPro opted to remove this case to federal court and thus should have known it would
 8 be required to disclose this information. Indeed, even aside from the Court's *sua sponte*
 9 jurisdictional inquiry, Rule 7.1(2) of the Federal Rules of Civil Procedure expressly
 10 requires each party to file a disclosure statement in which it must name—and identify the
 11 citizenship of—every individual or entity whose citizenship is attributed to that party when
 12 the action is filed in or removed to federal court. . . . Thus, if AmeriPro wants to keep its
 13 ownership secret, it may do so, but one consequence is lack of access to federal courts
 14 under the diversity jurisdiction.") (cleaned up).

15 Finally, putting aside the two deficiencies identified above (*i.e.*, failure to identify
 16 the trustees of the trusts that own Goldenrod Companies, LLC and failure to disclose the
 17 true identities of all of Defendant's limited partners), the jurisdictional allegations for the
 18 limited partners are insufficient in some other respects. The first limited partner, "LP I,"
 19 is the only one designated by name: Goldenrod Development, LLC. (*Id.* ¶ 11.) Its sole
 20 member is Goldenrod Companies, LLC (*id.*), discussed above, and therefore the allegations
 21 regarding its citizenship have the same infirmity discussed above—the owner trusts have
 22 the citizenship of their trustees, not their beneficiary, yet each beneficiary's citizenship is
 23 the only information that has been alleged.

24 Defendant alleges that LP II is "a Wyoming limited liability company" and that its
 25 "sole member is a corporation and such corporation's primary shareholder and president is
 26 an individual domiciled in Nebraska." (*Id.* ¶ 12.) From this, Defendant concludes that "LP
 27 II is a citizen of Wyoming and Nebraska." (*Id.*) However, if LP II's sole member is a
 28 corporation, the only relevant facts as to LP II's citizenship are the place of the member

1 corporation's incorporation and the location of the member corporation's principal place
2 of business. *Nike*, 20 F.3d at 990. The place where LP II itself was organized is not
3 relevant, nor are any facts regarding where the corporation's primary shareholder and
4 president is domiciled.

5 LP IV is alleged to be an LLC, and LP VI is alleged to be an unincorporated
6 association (Doc. 7 ¶¶ 14, 16), and therefore their members must be identified and the
7 citizenship of each member alleged. *NewGen*, 840 F.3d at 611. Nevertheless, the
8 citizenship of these entities was alleged as if they were corporations, rather than
9 unincorporated associations.

10 Finally, the Notice of Removal states: "Plaintiff alleges it is an Arizona corporation.
11 Accordingly, Plaintiff is a citizen of Arizona." (Doc. 7 ¶ 7.) Indeed, the complaint alleges
12 that "Plaintiff is an Arizona corporation, qualified to do and doing business in Arizona."
13 (Doc. 1 at 10.) The Court interprets the assertion that Plaintiff is an "Arizona corporation"
14 as indicating that Arizona is where Plaintiff is incorporated. But that is only half the inquiry
15 for a corporation. The principal place of business must also be pleaded. *Nike*, 20 F.3d at
16 990.

17 To cure these various pleading deficiencies, the Court will require Defendant to file
18 an amended notice of removal that affirmatively alleges the parties' citizenship under the
19 correct legal standards. *Star Ins. Co. v. West*, 2010 WL 3715155, *2 (D. Ariz. 2010); *see*
20 *also NewGen*, 840 F.3d at 612 ("Courts may permit parties to amend defective allegations
21 of jurisdiction at any stage in the proceedings."). Defendant is advised that failure to timely
22 comply with this order shall result in the remand of this action without further notice for
23 lack of subject-matter jurisdiction.

24 To ensure that the requirements of subject-matter jurisdiction are met, the Court will
25 also require Plaintiff to file a notice informing the Court of its principal place of business.

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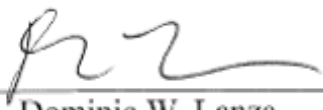
1 Accordingly,

2 **IT IS ORDERED** that Plaintiff shall file a notice informing the Court of its
3 principal place of business by **January 31, 2024**.

4 **IT IS FURTHER ORDERED** that Defendant shall file an amended notice of
5 removal properly stating a jurisdictional basis for this action no later than **February 7,**
6 **2024**.

7 **IT IS FURTHER ORDERED** that if Defendant fails to file an amended notice of
8 removal by **February 7, 2024**, the Clerk of Court shall remand this action to state court
9 without further notice.

10 Dated this 24th day of January, 2024.

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15 Dominic W. Lanza
16 United States District Judge
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